Supreme Court, U. S.
FILED
JUN 9 1977
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1976

No. ~~76-~~1751

JOSE HERNAN LEMOS-OLAYA,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOSEPH T. VODNOY

316 West Second Street
Suite 1200
Los Angeles, CA 90012
(213) 627-1736

Attorney for Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1976

No. _____

JOSE HERNAN LEMOS-OLAYA,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOSEPH T. VODNOY

316 West Second Street
Suite 1200
Los Angeles, CA 90012
(213) 627-1736

Attorney for Petitioner

TOPICAL INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED FOR REVIEW	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
REASONS FOR GRANTING THE WRIT	11
CONCLUSION	23
APPENDIX A (Opinion of the Court of Appeals)	A-1
APPENDIX B (Affidavit of Ernest D. Strange, Jr.)	B-1

TABLE OF AUTHORITIES

Cases	Page
Terry v. Ohio (1967) 367 U.S. 1	12, 17
United States v. Larkin (9th Cir. 1974) 510 F.2d 13	20
United States v. Maryland (5th Cir. 1973) 479 F.2d 566	19, 21
United States v. Maslanka (5th Cir. 1974) 501 F.2d 208	21
United States v. Morrison (9th Cir. 1976) 546 F.2d 319	17, 18, 22
United States v. Richards (9th Cir. 1974) 500 F.2d 1025	21
United States v. Strickler (9th Cir. 1974) 490 F.2d 378	20, 21
United States v. Ward (9th Cir. 1973) 488 F.2d 162	13, 18, 22
Wilson v. Porter (9th Cir. 1966) 361 F.2d 412	11

Statutes

18 U.S.C. § 4205(b)(2)	4
21 U.S.C. § 841(a)(1)	3
21 U.S.C. § 841(b)(1)(A)	4
28 U.S.C. § 1254(1)	2

Constitution

United States Constitution, Amendment IV	3

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1976

No. _____

JOSE HERNAN LEMOS-OLAYA,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, JOSE HERNAN LEMOS-OLAYA, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this cause on May 13, 1977.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Ninth Circuit appears in the Appendix A, infra, at page A-1.

JURISDICTION

The opinion of the United States Court of Appeals for the Ninth Circuit affirming the judgment of the United States District Court for the Central District of California was filed and judgment entered on May 13, 1977. No petition for rehearing was filed. The jurisdiction of this Court is invoked under Title 28, Section 1254(1) of the United States Code.

QUESTION PRESENTED FOR REVIEW

WHETHER A FOUNDED SUSPICION EXISTED WHICH WOULD JUSTIFY FEDERAL AGENTS IN STOPPING THE PETITIONER'S AUTOMOBILE AND DETAINING PETITIONER FOR QUESTIONING AND FURTHER INVESTIGATION.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, ..."

STATEMENT OF THE CASE

On September 13, 1976, the Federal Grand Jury for the Central District of California returned a one count Indictment charging JOSE HERNAN LEMOS-OLAYA and Adolfo Micolta Martinez with a violation of 21 U.S.C. § 841(a)(1), to wit: possession with intent to distribute approximately 1,242 grams of cocaine, a schedule II narcotic drug controlled substance.

On October 19, 1976, Petitioner's Motion to Suppress Evidence came on for hearing and was denied. A jury trial then commenced.

On October 20, 1976, Petitioner was found guilty as charged in the indictment.

The defendant Martinez was found not guilty.

On November 15, 1976, Petitioner was sentenced to the custody of the Attorney General for a period of two years under provisions of 18 U.S.C. § 4205(b)(2). It was further adjudged that upon release from confinement the Petitioner shall serve a special parole term of three years pursuant to 21 U.S.C. § 841(b)(1)(A).

On May 13, 1977, the United States Court of Appeals for the Ninth Circuit affirmed Petitioner's conviction. The opinion of the Court appears in Appendix A, infra, at page A-1.

STATEMENT OF FACTS

Since the sole question presented to this Court for review is whether the District Court erred in denying Petitioner's Motion to Suppress Evidence, only the evidence adduced at the hearing on the Motion to Suppress Evidence is set forth herein.

The Government submitted and the District Court received the affidavit of

Ernest D. Strange, Jr., dated October 18, 1976, as his direct testimony, subject to the right of additional direct examination and whatever cross-examination defense counsel desired. The complete affidavit appears in Appendix B, infra, at pages B-1 through B-10 inclusive.

The above mentioned affidavit contains the following pertinent allegations:

Special Agent Strange, who had been employed for six and one-half years by the Drug Enforcement Administration (DEA) and its predecessor, the Bureau of Narcotics and Dangerous Drugs, along with other DEA agents had, prior to September 2 and 3, 1976, been investigating an organization of Colombians who had been smuggling large quantities of cocaine into the United States utilizing commercial merchant vessels of the Gran Colombia Lines.

Agent Strange had been advised that the Gran Colombia Lines' commercial vessel Manual Mejia was being used to smuggle cocaine into the United States by way of ports located on the West Coast of the United States.

Agent Strange had further been advised that among the various methods used to transport the cocaine from the vessel to persons on shore would be for a member of the ship to carry the cocaine from the boat and hand it to other members of the organization who would be proceeding slowly behind the pier area in an automobile.

On September 2, 1976, Agent Strange learned that the Manual Mejia had docked in Long Beach and at approximately 7:30 P.M., surveillance of the vessel was initiated.

At approximately 10:30 P.M. September 2, 1976, a male Negro subsequently identified as Adolfo Martinez-Micolta (hereinafter Martinez) was seen disembarking from the Manual Mejia. Martinez was wearing dark pants and a light colored T-shirt with something printed across the chest area in dark letters. Martinez was seen entering a taxi and followed to the Panama Club in Long Beach.

At the Panama Club, Martinez met another male Negro subsequently identified as the Petitioner JOSE HERNAN LEMOS-

OLAYA (hereinafter LEMOS). Martinez and LEMOS then walked to the At-Ocean Motel and entered room number 35.

At approximately 11:30 P.M., Martinez and LEMOS left the motel, went to a liquor store and then returned.

At approximately 12:15 A.M. in the early morning hours of September 3, 1976, LEMOS drove Martinez back to the Manual Mejia in a 1976 blue Datsun 280 Z with paper license plates. Martinez embarked the vessel and LEMOS returned to the motel in the Datsun.

Between the hours of 12:45 A.M. and 2:20 A.M., LEMOS was observed in the company of two other individuals driving around the streets of Long Beach in the Datsun.

From 3:00 A.M. until 4:25 A.M. LEMOS drove around the streets of Long Beach by himself.

At approximately 4:25 A.M. LEMOS was followed as he proceeded in the Datsun toward Pier 24 where the Manual Mejia was docked. Also, at 4:25 A.M., Martinez disembarked the Manual Mejia and began

walking south on Pier 24 in the direction of the warehouse area.

At approximately 4:30 A.M., Agent Strange was advised that LEMOS had arrived in the area of Pier 24 and was then proceeding away from the pier area. Agent Strange immediately began following LEMOS.

At this same time, Agent Strange was advised that Martinez had, a few minutes earlier, been seen disembarking the Manual Mejia and walking around the warehouse area of Pier 24. Agent Strange was further advised that Martinez had walked back to the Manual Mejia "where a package appeared to land at his feet." Martinez picked up the package, put it under his jacket and then disappeared behind the maintenance shed.

Based on the information he had received, Agent Strange "concluded that Martinez had taken a package of cocaine and delivered it to LEMOS behind the shed." He further "believed that LEMOS was still in possession of the package...."

At approximately 4:45 A.M., Agent Strange decided that LEMOS should be

stopped for questioning and further investigation. Agent Strange positioned his vehicle in front of the Datsun, a second vehicle equipped with a red light was behind LEMOS and a third vehicle was to the side of LEMOS. The vehicle with the red light then activated the light.

At this point, LEMOS maneuvered between the other vehicles and accelerated to a high rate of speed. During the ensuing chase, Agent Strange observed LEMOS to throw a package from the passenger window of the vehicle. LEMOS was eventually stopped. The package thrown from the Datsun was recovered and found to contain in excess of two pounds of 57% cocaine.

Agent Strange indicated that prior to the stop of LEMOS' vehicle, he did not observe any Federal agent or officer display a weapon of any kind to LEMOS.

On cross-examination, Agent Strange testified that while he did have information which indicated that the Manual Mejia was being used to smuggle cocaine into the United States, he had never made any arrests in connection with that

vessel and he had no information regarding either Martinez or LEMOS.

Agent Strange never saw any transaction between Martinez and LEMOS nor was he informed by Agent Cummings that any such transfer had been observed.

Special Agent Steven P. Cummings, who had been observing Martinez, testified that he didn't actually see the package come down from the Manual Mejia. Rather, he testified that it just appeared to land at Martinez's feet.

Petitioner JOSE HERNAN LEMOS-OLAYA testified that during the time he was being pursued by the agents, he observed one of the agents pointing a gun at him.

The District Court, in denying Petitioner's Motion to Suppress Evidence made the following ruling:

> The Court finds that the procedures utilized by the officers were reasonable under all of the circumstances; and taking into consideration all of the facts that they had by combination before them, it was, at the very

> least, a founded suspicion to stop and detain the defendant under the circumstances.

The above quoted material may be found at pages 27 through 28 of the Reporter's Transcript of Proceedings prepared in this matter.

REASONS FOR GRANTING THE WRIT

The question herein presented deals with one of the most frequently litigated areas of constitutional law and one where it can be said with great certainty that little uniformity of decisions exists.

By its very nature, the law relating to temporary detentions of persons or vehicles is replete with apparently inconsistent decisions of the various courts of appeals.

There is little question that the so-called blackletter law is well settled in the area of temporary detentions made for investigative purposes.

Thus, in Wilson v. Porter (9th Cir. 1966) 361 F.2d 412, 415, the Court

formulated the standard to be applied when assessing the legality of a stop and detention as being whether the officers had a "founded suspicion" that criminal activity was afoot.

In deciding whether the officers had a founded suspicion, the courts require that the officers be able to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." Terry v. Ohio (1967) 392 U.S. 1, 21.

Moreover, "'simple good faith on the part of the arresting officer is not enough.'" Terry v. Ohio, supra, 392 U.S. at p. 22.

Having stated the law applicable to the instant case, the inquiry must now focus on whether the District Court erred in denying Petitioner's Motion to Suppress Evidence.

A threshold question to be considered here is whether the Petitioner even has standing to assert a Fourth Amendment violation. There can be little question

that a constitutionally protected seizure occurred in this case.

As stated in United States v. Ward (9th Cir. 1973) 488 F.2d 162, 168:

> [A]lthough not all street encounters between citizens and law enforcement agents involve Fourth Amendment considerations, when an officer accosts an individual and by physical force or show of authority restrains his liberty, the stop becomes a "seizure" of the person. [Citation]

The Court went on to state:

> ...it is clear that when four federal agents pull a motorist off the road by use of a siren there has been a seizure even though the agents only intended to make a routine investigation. 488 F.2d at 168.

In the case at bar, it is uncontradicted that the officers attempted to detain the Petitioner by use of a car with

a red light. Thus, a seizure within the purview of the Fourth Amendment occurred and Petitioner has standing to assert its illegality.

Having established that a seizure occurred, the next inquiry is whether it was constitutionally valid.

As pointed out previously, a temporary detention need only be based on a "founded suspicion" supported by "specific and articulable facts."

In the instant case, Agent Strange had information that vessels of the Gran Colombia Lines were being used to smuggle cocaine into the United States. When he learned that the Gran Colombia Lines' merchant vessel Manual Mejia, a vessel implicated in smuggling, had docked in Long Beach, a surveillance was initiated. Agent Strange had made no prior arrests in connection with that vessel, nor did he have any information concerning the Petitioner or Martinez.

The agents observed the Petitioner and Martinez together on several occasions in the evening and early morning of September 2 and 3, 1976. The Petitioner

and Martinez were observed driving around Long Beach together, in a bar and in a motel.

Just prior to the Petitioner's arrest, Martinez was seen disembarking the Manual Mejia. According to Agent Cummings, a package appeared to land at Martinez' feet which Martinez picked up. Martinez then disappeared behind the maintenance shed.

At this same time, the Petitioner had been followed to the pier area. Agents also observed the reflection of brake lights on the side of the warehouse directly across from the maintenance shed. At this point, Agent Strange decided that the Petitioner should be stopped for questioning and further investigation.

It is interesting to note that during the trial, Agent Cummings' identification of Martinez as the person he had seen disembarking the ship was very questionable and thoroughly equivocal (R.T. pp. 91-100).

The fundamental issue to now be considered is whether the facts as recited

above would lead the officers to have a "founded suspicion" that criminal activity was afoot.

The officers knew only that the Manual Mejia was possibly involved in smuggling cocaine. Their surveillance revealed the fact that the Petitioner and Martinez spent a good deal of time together. Agent Cummings did not actually see the package come down from the vessel nor did he ever see any transaction occur between the Petitioner and Martinez. In fact, the Petitioner's car was never seen behind the warehouse. Agent Cummings testified that he saw the reflection of brake lights on the wall.

Based on this information, Agent Strange concluded that Martinez had "taken a package of cocaine and delivered to LEMOS behind the shed."

Petitioner would urge that the facts pointed to by the officers are patently insufficient to justify a stop and detention. The officers cannot point to any articulable fact that would lead them to believe that the package contained cocaine or that it had, in fact, been transferred

to the Petitioner by Martinez.

While Petitioner recognizes the need for police officers to be able to make investigatory stops, the case at bar is totally lacking in the requisite "articulable facts" which give rise to a "founded suspicion." As clearly stated in Terry v. Ohio, supra, "simple good faith...is not enough."

A careful review of the facts leads unquestionably to the conclusion that the officers did not have a "founded suspicion" and therefore the detention was illegal.

In the very recent case of United States v. Morrison (9th Cir. 1976) 546 F.2d 319, the defendant was observed driving near the border in a notorious smuggling area. The police became suspicious because the defendant's ten year old car was dust free, unfamiliar to them, had a large trunk and bore an out-of-town license plate frame. Based on these facts, the agents used their siren to stop the defendant.

Citing United States v. Ward (9th Cir. 1973) 488 F.2d 162 the Court said:

> [W]hen a law enforcement officer signals a motorist to stop by use of a siren or red light, there has been a seizure which must be justified under the Fourth Amendment. [Citations] The seizure occurs when the officer first communicates the command to halt. The command must be valid when given, its character is not changed by the motorist's response, any more than probable cause can be established by what the search discloses. [Citation] 546 F.2d at p. 320.

The Court in Morrison held that the officers had no basis for a reasonable suspicion that illegal activity was afoot. The Court stated that proximity to the border and prior illegal activity in the area were relevant factors, but that they do not justify a stop absent some other indication of illegal activity. 546 F.2d at p. 320.

Since the initial detention was invalid, the Petitioner's disposal of the contraband was a direct and proximate result of that illegality and should therefore be suppressed.

In United States v. Maryland (5th Cir. 1973) 479 F.2d 566 the court held:

> If there is a "nexus between... lawless (police) conduct and the discovery of the challenged evidence" which has not "become so attenuated as to dissipate the taint," then the evidence should be suppressed.

In the instant case, the illegal police detention caused the Petitioner to dispose of the package. The contraband seized should therefore have been suppressed.

Petitioner would further contend that the agents did not merely intend to detain him and conduct an investigation but that, in fact, the stop was made for the purpose of arresting him.

Agent Strange testified that he believed the defendant was in possession of

cocaine. Three cars were used to surround the defendant's vehicle, and, according to the Petitioner, at least one of the agents drew his gun.

In United States v. Strickler (9th Cir. 1974) 490 F.2d 378, the defendant was seated in a parked car when he was surrounded by officers who, with guns drawn, ordered him to raise his hands. The court, in holding that these actions constituted an arrest stated that "we cannot equate an armed approach to a surrounded vehicle whose occupants have been commanded to raise their hands" with a temporary detention. See 490 F.2d at p. 380.

In United States v. Larkin (9th Cir. 1974) 510 F.2d 13, the defendant was stopped by border patrol agents who had blocked the highway and who, with guns drawn, ordered the defendant out of his vehicle. The Court held that this was an arrest, not a temporary detention. Thus, in Larkin, the defendant's vehicle was stopped by the use of drawn weapons and a road block.

In United States v. Maslanka (5th Cir. 1974) 501 F.2d 208, 213 fn. 10, a case often cited by the Government, the Court never decided whether United States v. Strickler, supra, was applicable because the court found that the police did have probable cause to arrest at the time of the initial detention.

In United States v. Richards, (9th Cir. 1974) 500 F.2d 1025 the police officer, with his gun drawn, ordered a taxiing airplane to stop and the pilot to disembark. The court held that to be a temporary detention but went on to state that the determination of when an arrest occurs is a question of fact which depends on all of the surrounding circumstances.

Petitioner contends that the action of the DEA and other agents in this case constituted an arrest and not a mere temporary detention. The agents used a car with a red light and, according to the Petitioner, displayed their weapons. At the point an arrest had occurred.

The agents thus attempted to arrest the petitioner without probable cause to do so. The attempted stop was much more

than a mere attempt to investigate.

It is clear that the initial illegal conduct of the agents caused the Petitioner to attempt to evade the stop and to subsequently dispose of the contraband. As United States v. Morrison, supra, makes clear, the order to stop must be valid when given.

Where the facts do not support a finding of a "founded suspicion" then, a fortiori, probable cause does not exist.

The nexus between the conduct of the agents and the discovery of the cocaine is such that there has been no attenuation at all. From its inception, the attempt by the agents to detain the petitioner was unlawful and unreasonable.

To that end, United States v. Maryland, supra, and United States v. Ward, supra, are dispositive of the case at bar.

The discovery of the cocaine stems in total from unreasonable police conduct and should therefore have been suppressed. The District Court thus clearly erred in denying petitioner's Motion to Suppress Evidence.

CONCLUSION

A sense of justice and concern for the uniformity of our national jurisprudence compels this Honorable Court to grant certiorari in this cause.

Respectfully submitted,
JOSEPH T. VODNOY
Attorney for Petitioner

APPENDIX A

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. JOSE LEMOS-OLAYA, *Defendant-Appellant.*	No. 76-3535 MEMORANDUM

[May 13, 1977]

Appeal from the United States District Court
for the Central District of California

Before: CUMMINGS,* HUFSTEDLER, and WALLACE, Circuit Judges

The sole question on appeal is whether the district court erred in denying appellant's motion to suppress the cocaine. That question turns upon whether founded suspicion justified the attempted stop of appellant's automobile. If the stop was supported by founded suspicion, the cocaine should not have been suppressed because probable cause clearly developed after the attempted stop.

We are of the view that the combination of facts, together with the inferences that could be appropriately drawn, supported the district court's decision that founded suspicion existed justifying the stop.

AFFIRMED.

*Honorable Walter J. Cummings, United States Circuit Judge, Seventh Circuit, sitting by designation.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 5-17-77—410

APPENDIX B

AFFIDAVIT OF ERNEST D. STRANGE, JR.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

ERNEST D. STRANGE, JR., Special Agent of the United States Department of Justice, Drug Enforcement Administration, Los Angeles, California Office, being duly sworn, hereby depose and state as follows:

1. I am a Special Agent of the Drug Enforcement Administration (DEA), formerly the Bureau of Narcotics and Dangerous Drugs, and have been so employed for the past six and one-half years.

2. Pursuant to my duties as a Special Agent with the Drug Enforcement Administration, I have conducted an investigation involving the possession with intent to distribute approximately two pounds of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), by ADOLFO MARTINEZ-MICOLTA and JOSE HERNAN LEMOS-OLAYA.

3. Prior to the events of September 2, and 3, 1976, myself and Special Agents of the Drug Enforcement Administration, were

familiar with the following facts and circumstances:

a. That Special Agents of the Drug Enforcement Administration have been involved in the investigation of an organization of Colombians who have been smuggling large quantities of cocaine into the United States utilizing commercial merchant vessels of the Gran Colombia Lines. I have been advised by other Special Agents of the Drug Enforcement Administration in San Francisco and Baltimore that large quantities of cocaine have been seized by them from ships of the Gran Colombia Lines. I have also been advised that the Gran Colombia Lines' commercial vessel Manual Mejia which travels between Colombia and ports of the West Coast of the United States was being utilized to smuggle multikilogram quantities of cocaine into the United States.

b. Prior to September 2, 1976, I was advised by Special Agent Everett Jackson, Drug Enforcement Administration, that this organization of Colombians utilized several different methods of transporting the cocaine from the merchant ships to the intended receivers of the

drug. Among the various methods would be for a crew member of the vessel to carry the cocaine from the ship and hand it to other members of the organization who would be proceeding slowly behind the pier area in an automobile.

4. On September 2, 1976, I learned that at approximately 11:00 P.M., September 1, 1976, the commercial merchant vessel Manual Mejia had arrived at its initial port of entry into the United States at Long Beach, California, and docked at Pier 24. On September 2, 1976, at approximately 7:30 P.M., surveillance was initiated in the immediate vicinity of the Manual Mejia by Special Agents of the Drug Enforcement Administration and Patrol Officers of United States Customs. A joint investigation between DEA and U.S. Customs had been initiated based on the intelligence information stated earlier in this affidavit.

5. At approximately 10:30 P.M., September 2, 1976, I received a radio message from Group Supervisor Steven P. Cummings stating that a Negro male subsequently identified as ADOLFO MARTINEZ-MICOLTA had

been observed by Agent Cummings to disembark the Manual Mejia and walk from the vessel toward the warehouse area of Pier 24 located adjacent to the vessel. At this time Agent Cummings further advised that MARTINEZ was wearing dark pants and a light colored T-shirt with something printed across the chest area in dark letters.

6. Also at this same time I received a radio message from Special Agent Everett Jackson that MARTINEZ had entered a red and white Diamond taxi and had driven out of the area away from the pier.

7. At approximately 10:35 P.M., I received a radio message from Special Agent Phillip Roberts that the Diamond taxi had arrived at the Panama Club, 117 Pine Street in Long Beach, and that MARTINEZ had been observed by Special Agent Roberts to meet in front of the Panama Club with another Negro male subsequently identified as JOSE HERNAN LEMOS-OLAYA. Special Agent Roberts further advised me that MARTINEZ and LEMOS had begun walking east-bound of 1st Street.

8. At approximately 11:00 P.M.,

Special Agent Roberts advised me via radio message that MARTINEZ and LEMOS had arrived at the At-Ocean Motel on Atlantic Avenue and had entered room number thirty-five.

9. At approximately 11:30 P.M., I observed MARTINEZ and LEMOS as they exited the motel room and walked to Jack's Liquor located on Ocean Avenue approximately two blocks from the At-Ocean Motel. At approximately 11:55 P.M., I obserfed MARTINEZ and LEMOS exit Jack's Liquor and return to the motel room arriving at ap-approximately 12:00 midnight.

10. On September 3, 1976, at approximately 12:15 A.M., I observed MARTINEZ and LEMOS to exit the motel room and enter a light blue, 1976 Datsun 280Z with paper license plates displaying the words "Alhambra Datsun." MARTINEZ and LEMOS proceeded in the Datsun to Pier 24, Port of Long Beach, arriving at approximately 12:25 A.M. At this time, G/S Cummings informed me via radio message that he had observed MARTINEZ, to exit the Datsun and embark the merchant vessel Manual Mejia. I then observed LEMOS proceed in the

Datsun back to the motel room arriving at approximately 12:30 A.M.

11. At approximately 12:45 A.M., I observed LEMOS and two other Negro individuals subsequently identified as Percy Walker and Barbara Marie Moore exit the motel room and enter the blue Datsun. From 12:45 A.M., until 1:30 A.M., I observed the three individuals as they drove around the streets of Long Beach within a three mile perimeter of the At-Ocean Motel. At approximately 1:20 A.M., I observed LEMOS, Walker, and Moore as they arrived at the Americana Restaurant located near the corner of Atlantic Avenue and Broadway. At approximately 2:15 A.M., I observed LEMOS, Walker and Moore as they exited the restaurant, entered the Datsun and proceeded back to the motel arriving at 2:20 A.M.

12. At approximately 3:00 A.M., I observed LEMOS to exit the motel room alone and enter the Datsun. From 3:00 A.M. until 4:25 A.M., I observed LEMOS driving around the streets of Long Beach indiscriminately stopping on two occasions at a coffee shop and a theater.

13. At approximately 4:25 A.M., I followed LEMOS as he proceeded in the Datsun toward Pier 24. Also, at 4:25 A.M., I received a radio message from Agent Cummings stating that MARTINEZ had disembarked the Manual Mejia and was walking south on Pier 24 in the direction of the warehouse area.

14. At approximately 4:30 A.M., I received a radio message from Agent Lynn Williams stating that he had just observed the blue Datsun proceeding between the warehouses on Pier 24 in the direction of the Manual Mejia. Almost immediately, Agent Williams stated via radio message that the blue Datsun was now proceeding out of the area and away from Pier 24.

15. I then followed LEMOS as he proceeded in the Datsun eastbound on Ocean Avenue through Long Beach. At this time, I received a radio message from Agent Cummings which stated that a few minutes earlier he had observed MARTINEZ disembark the Manual Mejia and walk around the warehouse area of Pier 24. Agent Cummings continued by stating that he had

observed MARTINEZ to walk back to the Manual Mejia where a package appeared to land at his feet. Agent Cummings further stated that he observed MARTINEZ to place the package under his jacket and to look carefully around the area before again walking south on Pier 24 subsequently disappearing behind a maintenance shed. Agent Cummings also relayed to me via radio message that at this time he observed the reflection of brake lights on the side of the warehouse directly across from the maintenance shed.

16. Based on the observations of Agent Cummings, I concluded that MARTINEZ had taken a package of cocaine and delivered it to LEMOS behind the maintenance shed. I further believed that LEMOS was still in possession of the pakcage due to the fact that he had been under constant surveillance by DEA Special Agents and U.S. Customs Patrol Officers since leaving Pier 24.

17. At approximately 4:45 A.M., it was determined by myself and U.S. Customs Officers that LEMOS should be stopped for questioning and further investigation. I

then advised the other DEA Special Agents of this decision. At this time I positioned my vehicle directly in front of LEMOS's Datsun and began slowing. I also instructed a U.S. Customs vehicle equipped with a red light to position himself directly behind LEMOS's vehicle with another DEA vehicle to the side of LEMOS. When all units were in position I slowed to a stop and requested that the U.S. Customs turn on their red light which they did. At this time LEMOS maneuvered between surveillance vehicles and accelerated to a high rate of speed in an obvious attempt to avoid apprehension. During the ensuing chase, I observ[illegible] LEMOS to throw a package from the passenger window of the Datsun. I was subsequently able to stop LEMOS's vehicle (near the intersection of Livingston Drive and 2nd Street) and observed him fighting with U.S. Customs Officers Brooks and Spencer as they attempted to remove him from the Datsun. Prior to the stop of LEMOS's vehicle I did not observe any Federal agent or officer display a weapon of any kind to LEMOS. The

stop occurred approximately four to five miles from Pier 24.

18. I then proceeded back to Livingston Drive where Agent Williams was waiting. Agent Williams then told me that he had stopped his vehicle when he observed LEMOS throw the package from the Datsun. Agent Williams then pointed to where the package was located which was on the side of a dirt embankment adjacent to Livingston Drive and 2nd Street. At this time I took possession of the package which was subsequently analyzed and found to contain in excess of two pounds of 57% cocaine.

/s/ Ernest D. Strange, Jr.

ERNEST D. STRANGE, JR.
Affiant

SUBSCRIBED AND SWORN to before me this 18th day of October, 1976.

/s/ Norma Jean Fullerton

NOTARY PUBLIC, In and for said County and State.

OFFICIAL SEAL
NORMA JEAN FULLERTON
Notary Public - California
Los Angeles County
My comm. expires SEP 30, 1979

SINCE 1952
THE BRIEF SHOP
10844 VENTURA BOULEVARD
NORTH HOLLYWOOD, CA. 91604
LAWYERS BRIEF SERVICE
LEGAL & COMM. PRINTING
(213) 877-8620 763-2965